

Message Text

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PAGE 01 USBERL 02945 151912Z
ACTION EUR-12

INFO OCT-01 ISO-00 ACDA-12 IO-13 CIAE-00 DODE-00 PM-05
H-01 INR-07 L-03 NSAE-00 NSC-05 PA-01 PRS-01
SP-02 SS-15 USIA-06 /084 W
-----001630 151932Z /40

P R 1516125Z NOV 77
FM USMISSION USBERLIN
TO SECSTATE WASHDC PRIORITY 5703
AMEMBASSY BONN PRIORITY
INFO AMEMBASSY LONDON
AMEMBASSY BERLIN
AEMEMBASSY MOSCOW 9898
AMEMBASSY PARIS
USMISSION USNATO

CONFIDENTIAL USBERLIN 2945

E.O.11652: XGDS-1
TAGS: PGOV, AKB, BQG
SUBJECT: REFERRAL OF CASE FROM BERLIN COURT TO FRG FEDERAL
CONSTITUTION COURT

REF: (A) BONN 18965, (B) USBERLIN, (C) BONN 17394

SUMMARY: BRITISH AND US MINISTERS IN BERLIN HAVE AGREED TO AD
REF TALKING PAPER AND PROPOSED APPROACH TO STOBBE. FRENCH
MINISTER HAS NOT YET COMMENTED, IN ABSENCE OF REPORT OR INSTRU
TIONS FROM FRENCH EMBASSY BONN. ACTION REQUESTED: THAT US BONN
GROUP REP REQUEST FRENCH EMBASSY TO CONTACT FRENCH MISSION BERLIN.
END USMMARY.

1. AS PER UNDERSTANDING OF NOV 8 MEETING IN BONN BETWEEN ALLIED
BONN GROUP REPS AND BERLIN LEGAL ADVISERS, ALLIED BONN GROUP
REPS AD REF TEXT WAS SUBMITTED FOR REVIEW BY BERLIN MINISTERS.
BRITISH AND US MINISTERS HAD NO PROBLEMS WITH TEXT, BUT FRENCH
MINISTER WAS, INITIALLY, NOT IN A POSITION TO COMMENT. UPON
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INQUIRY, WE DISCOVERED THAT PROBLEM IS THAT FRENCH EM
BASSY IN BONN HAS NOT REPORTED TO OR INSTRUCTED FRENCH
MISSION IN BERLIN. FRENCH LEGAL ADVISER (PEIFFER) REMINDED
USBER LEGAL ADVISER THAT GRENCH BONN GROUP REP (GAUSSOT)
HAS SAID AT NOV 8 MEETING THAT HE WOULD HAVE TO CHECK WITH
HSI PRINCIPALS AT FRENCH EMBASSY. PEIFFER COULD ONLY

SPECULATE ON REASONS FOR DELAY IN RECEIVING REPORT AND INSTRUCTIONS. HIS SPECULATIONS INCLUDED POSSIBILITY THAT FRENCH EMBASSY DID NOT REPEAT NOT CONCUR IN MAKING REFTEL A APPROACH TO STOBBE. IN NAY CASE, IT WAS HIS VIEW THAT FRENCH MINISTER IN BERLIN WOULD NOT COMMENT UNTIL HE HAD HEARD FROM FRENCH EMBASSY.

2. ACTION REUQESTED: THAT US BONN GROUP REP ADVISE FRENCH THAT WE IN BERLIN HAVE NOT REPEAT NOT YET RECEIVED FRENCH MINISTER'S CONCURRENCE TO AD REF TEXT AND APPROACH TO STOBBE, AND THAT FRENCH EMBASSY SHOULD REPORT TO AND/OR INSTRUCT FRENCH MISSION IF IT HAS NOT YET DONE SO.

3. COMMENT: IN OUR VIEW, WE CAN NOT REPEAT NOT EXPPECT THE APPROACH TO STOBBE TO BE MORE THAN PRESENTATIONAL. AS PARAS 4 AND 5 OF REFTEL A REPORT, APPROACH TO STOBBE AS ORIGINALLY PLANNED WOULD HAVE INCLUDED INVITATION TO MEET WITH JUDGES OF THE BERLIN COURT IN QUESTION. BERLIN LEGAL ADVISERS BELIEVED THIS WOULD BE IMPROPER INTERFERENCE WITH BERLIN JUDICIAL PRESS. FRENCH AND USBER LEGAL ADVISERS ALSO CONSIDERED INDIRECT APPROACH TO JUDGES WOULD BE IMPROPER (I.E. HINTING TO STOBBE THAT WE WOULD MEET WITH JUDGES IF JUDGES SO WISHED). ACCORDINGLY, WE UNDERSTOOD ALLIED EMBASSIES TO AGREE THAT MINISTERS WOULD NOT REPEAT NOT ALLUDE TO JUDGES IN APPROACHE TO STOBBE, BUT THAT IF JUDGES THEMSELVES WERE TO APPROACH ALLIES WE WOULD DISCUSS MATTER INFORMALLY WITH THEM. WE CONSIDER IT VERY CONFIDENTIAL

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UNLIKELY THAT JUDGES WILL APPROACH US, AND UNLIKELY THAT THEY WOULD UNILATERALLY WITHDRAW THEIR REQUEST TO THE FEDERAL CONSTITUTIONAL COURT. ACCORDINGLY, WE REGARD THAT THIS APPROACH CAN BE EXPECTED TO HAVE ONLY PRESENTATIONAL VALUE. DAVIS

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NNN

*** Current Handling Restrictions *** n/a

*** Current Classification *** CONFIDENTIAL

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